

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY POYNTZ,

Defendant-Appellant.

UNPUBLISHED

August 9, 2005

No. 253402

Wayne Circuit Court

LC No. 03-009400-01

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant Jerry Poyntz was convicted, following a bench trial, of assault with intent to do great bodily harm less than murder.¹ The trial court sentenced Poyntz as a third habitual offender² to serve 5½ to 20 years' imprisonment. Poyntz appeals as of right, and we affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

In the early-morning hours of August 3, 2003, Poyntz forcibly entered the home of his former girlfriend and repeatedly struck and kicked her, breaking her arm. The complainant and Poyntz both testified that he was in a state of extreme alcohol intoxication at the time.

II. Sufficiency Of The Evidence

A. Standard Of Review

We review de novo challenges to the sufficiency of the evidence, taking the evidence in the light most favorable to the prosecutor and determining whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.³

¹ MCL 750.84.

² MCL 769.11.

³ *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

B. Specific Intent

Poyntz's sole argument on appeal is that he was too intoxicated to have acted with the specific intent to cause great bodily harm.⁴ However, recourse to intoxication as a defense to a specific intent element has been sharply curtailed by statute. MCL 768.37, effective September 1, 2002, provides:

(1) Except as provided in subsection (2), it is not a defense to any crime that the defendant was, at that time, under the influence of or impaired by a voluntarily and knowingly consumed alcoholic liquor, drug, including a controlled substance, other substance or compound, or combination of alcoholic liquor, drug, or other substance or compound.

(2) It is an affirmative defense to a specific intent crime, for which the defendant has the burden of proof by a preponderance of the evidence, that he or she voluntarily consumed a legally obtained and properly used medication or other substance and did not know and reasonably should not have known that he or she would become intoxicated or impaired.

Poyntz fails to acknowledge this statute, and nowhere suggests that on the night in question he failed to appreciate that his drinking would lead to intoxication or impairment. Therefore, he does not fit within the exception to MCL 768.37(1).

Moreover, Poyntz cites no authority for the proposition that even overwhelming evidence of severe intoxication precludes a finding of specific intent as a matter of law. In this case, the victim's description of Poyntz's kicking her door to enter the house, taking her telephone from her hand, then swinging at her and kicking her afforded the trial court a sufficient basis for concluding that Poyntz acted with the specific intent to cause serious bodily injury.⁵

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

⁴ See *People v Bailey*, 451 Mich 657, 669; 549 NW2d 325 (1996), amended 453 Mich 1204 (1996) (assault with intent to do great bodily harm less than murder is a specific intent crime).

⁵ See *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998) (intent may be inferred from minimal circumstantial evidence).